

July 5, 2011

JoDale Legg
New Jersey Department of Environmental Protection
Land Use Regulation Program
Mitigation Unit
P.O. Box 439
Trenton, NJ 08625

Alison Hess
Project Manager
US EPA Region 2
290 Broadway, 19 Floor
New York, NY 10007-1866

**RE: Wetland Mitigation Update and Schedule
Standard Chlorine Chemical Company and Diamond Sites
Kearny, Hudson County, New Jersey
NJDEP Permit No. 0907-09-0007.1**

Dear Ms. Legg and Ms. Hess:

This letter is meant to provide an update as to our current progress related to modification of plans for the wetland mitigation associated with the subject site. As has been recently discussed, the Peninsula Restoration Group (PRG) consisting of the Standard Chlorine Chemical Company, Tierra Solutions Inc., and Beazer East, Inc. is in the process of attempting to secure mitigation credits from off-site wetland mitigation banks to provide compensation for the intertidal wetland portion of the previously approved mitigation plan (Key Environmental, April 2010, Shoreline Restoration and Tidal Emergent Wetland Mitigation Plan, Waterfront Development/ Flood Hazard Permit and Water Quality Certificate, Interim Response Action, Standard Chlorine Chemical Co and Diamond Site, Kearny, Hudson County).

Background

The overall mitigation project will consist of 0.45 acres of intertidal wetland restoration along the Hackensack River shoreline and 1.20 acres of freshwater emergent wetlands in upland areas. Approximately 1.3 acres of intertidal sub-tidal shallows will also be restored as intertidal flats. The establishment of 0.45 acres of vegetation in the tidal zone was planned to off-set disturbance to tidal wetlands (0.06 acres) and a relatively small portion of the upland freshwater wetlands (0.39 acres) resulting from remediation of the Site. As a modification to the plan, an April 8, 2011 letter (attached) provided justification and a proposed combination of off-site credits (0.225 acres) and on-site intertidal restoration to compensate for the vegetation portion of the tidal mitigation. There is no change proposed to the mitigation planned for the upland areas or the intertidal restoration.

Current Status

The April 8 letter proposes to secure credits from the Marsh Resources 3 Bank. At the present time this bank has not yet secured full regulatory approval to construct the bank and issue credits. Therefore on behalf of PRG, inquiries have been made to purchase credits at another mitigation bank (Port Reading). Although a limited amount of credits are available, it is possible that a request to utilize the Port Reading bank may be denied by the Interagency Review Team (IRT) as the Port Reading bank is not located in the same service area as the Site.

Future Schedule

PRG proposes to pursue purchasing a total of 0.225 credits from a combination of either the Port Reading and/or the Marsh Resources 3 Bank. Should the purchase of credits from the Port Reading Bank be denied because the bank is out of the Site's district or if the Marsh Resources 3 Bank is not available in an acceptable time frame then PRG would propose to compensate for regulated impacts through an "in-lieu" fee payment to the NJDEP wetland mitigation council. Provided below are proposed timeframes for these activities:

1. Petition Port Reading Bank for Mitigation Credits – August 2011.
2. Secure all or a portion (pending Port Reading Bank issuance of credits) of credits from Marsh Resources 3 Bank – December 2011.
3. In lieu fee payment to NJDEP Wetland Mitigation Council.– April 2012.

The remediation project is currently anticipated to be complete by the end of this construction season at which time the upland freshwater emergent wetlands and intertidal restoration will have been constructed. Because of this anticipated completion date, we wish to identify alternate means to satisfy the project's compensatory mitigation requirement as well as the conditions of the permits.

We sincerely appreciate your consideration of this approach and schedule described above. Please let us know if you concur with this strategy and if this will necessitate a modification to the permit. Please contact me at 908-237-5660 should you have any questions or require additional information concerning our requested modifications.

Sincerely,



Peter Sawchuck, P.E.
Project Manager

Cc: Suzanne Dietrick (NJDEP)
Chris Kanakis (NJDEP)
Mark Gallagher (Princeton Hydro, LLC)
Mike Slenska (Beazer)
Peg Kelly (SCCC)
Enrique Castro (Tierra)

ATTACHMENT

April 8, 2011

JoDale Legg
New Jersey Department of Environmental Protection
Land Use Regulation Program
Mitigation Unit
P.O. Box 439
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*Scientists, Engineers &
Environmental Planners
Designing Innovative
Solutions for Water,
Wetland and Soil
Resource Management*

RE: Request to Modify Wetland Mitigation Approach
Standard Chlorine Chemical Company and Diamond Sites
Kearney, Hudson County, New Jersey
NJDEP Permit No. 0907-09-0007.1

Princeton Hydro Project Number: 502.008

Dear Ms. Legg,

As we discussed last week the proposed mitigation plan (Key Environmental, April 2010, Shoreline Restoration and Tidal Emergent Wetland Mitigation Plan, Waterfront Development/Flood Hazard Permit and Water Quality Certificate, Interim Response Action, Standard Chlorine Chemical Co and Diamond Site, Kearny, Hudson County) for the remediation of the Standard Chlorine Chemical Company and Diamond Sites does not lend itself to the establishment of wetland at this location. As you are aware, many of the wetlands bordering urban rivers such as the Hackensack are either eroded remnants of a larger wetland or are present because some type of structural fill provides sufficient stability to keep the wetland in place.

It was initially believed that the permit-approved 0.45 acres of intertidal wetlands could be created to mitigate for wetlands disturbed during remediation efforts. However, based on a recent determination of site conditions we believe that this may not be a realistic endeavor. The current wetland mitigation plan provided for the restoration of the intertidal flat and planting in selected areas along the Hackensack River shoreline between the elevations of mean high water and 1 ft above mean sea level (+1ft msl) for a total planting area of 0.45 acres. However, a difference has been discovered between the existing topography (February 2011) and the original bathymetric survey that is indicated on the mitigation plan) in the area of the proposed intertidal wetland planting area. The most recent topography when compared to the 2008 survey reveals lower elevations along the shoreline in the area of the proposed mitigation. It is suspected that the elevation difference is a result of erosion and/or shifting of the shoreline due to wave/current action caused by severe storms, ice flows, etc. Whatever the reason, the change was sufficient to likely affect the success of the approved design. The change in topography noted will require design modifications and additional fill in some areas to prepare the site for the planned mitigation.

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Although the eventual establishment of vegetation in this location is not precluded by the design or the changes that would be needed to restore the elevations as per the approved mitigation plan; it does not, however, seem prudent to commit to the establishment of vegetation at the approved location due to the significant flows in this area during storm events. Therefore, we believe that the mitigation requirements for this site would be best served through off-site mitigation, preferably through a mitigation bank. In this scenario the modified design would eliminate the planting component and the corresponding need for A-Jacks along the perimeter of the planting area. Because this approach would re-establish the intertidal element of the project, but not include the planting element of the plan, it is our position that a portion of the mitigation requirement for this project would be satisfied and would leave only the vegetation component of the project's mitigation requirement to be satisfied through the purchase of credits at a mitigation bank.

Typically, the area of wetland impact would be matched with the same number of mitigation bank credits. For example, in this case for the 0.45 acres of wetland to be impacted by remediation would require the purchase of 0.45 credits. However, because the intertidal flat would be restored as part of the project, the purchase of less than 0.45 credits would seem appropriate. By modifying the plan to eliminate only the vegetated component of the required mitigation, we propose that this element of the plan be satisfied through the purchase of mitigation credits at an approved bank. By restoring the intertidal portion of the wetland mitigation site per the plan, we believe that it would be appropriate to have the vegetation component of the 0.45 acre mitigation site be satisfied through the purchase of 0.225 credits.

We sincerely appreciate your consideration of the proposed mitigation plan modifications described above. Please let us know if you concur with this strategy since the opportunity to acquire credits at the *Marsh Resource 3 Bank* may not be possible once it is under construction. Please contact me at 908-237-5660 should you have any questions or require additional information concerning our requested modifications.

Sincerely,



Mark Gallagher
Vice President

Cc: Suzanne Dietrick (NJDEP) via email
Chris Kanakis (NJDEP) via email
Joseph Karpa (NJDEP) via email
Alison Hess (EPA) via email
Mike Slenska (Beazer) via email
Peg Kelly (SCCC) via email
Enrique Castro (Tierra) via email
Peter Sawchuck (Key Environmental) via email